

DEPARTMENT OF HEALTH AND SENIOR SERVICES

SENIOR SERVICES BRANCH

DIVISION OF LONG-TERM CARE SYSTEMS

Standards for Licensure of Long-Term Care Facilities

Alzheimer's/Dementia Programs

Proposed Amendment: N.J.A.C. 8:39-45.1

Authorized by _____

Fred M. Jacobs, M.D., J.D., Commissioner, Department of Health and
Senior Services (with the approval of the Health Care
Administration Board).

Authority: N.J.S.A. 26:2H-5.

Calendar Reference: See Summary below for the explanation of exemption to calendar
requirement.

Proposal Number: PRN 2005-310

Submit comments by November 5, 2005 to:

Barbara Goldman, Director

Licensing and Certification Unit

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The agency proposal follows:

Summary

This amendment is proposed in order to correct a technical error in N.J.A.C.
8:39-45.1. The existing text at N.J.A.C. 8:39-45.1(b) precludes a long-term care facility

from advertising as providing an Alzheimer's/dementia program unless it is recognized by the Department as meeting "at least 65 percent of all current advisory standards in N.J.A.C. 8:39-46.1." However, the advisory standards are contained in an entire subchapter (N.J.A.C. 8:39-46) called "Alzheimer's/Dementia Programs-Advisory Standards." Therefore, the cross-reference is too limited inasmuch as it refers to only one section of the advisory standards. The previous cross-reference was to the entire subchapter level and the cross-reference to the section level was an unintended error made when the rules at N.J.A.C. 8:39 were adopted in 2001. In practice, the Department has applied the totality of Subchapter 46 when approving long-term care facilities to hold themselves out as offering Alzheimer's/dementia programs. In this proposal, the Department proposes to amend the cross-reference in N.J.A.C. 8:39-45.1(b) so that it again refers to Subchapter 46 in its entirety.

A 60-day comment period is provided for this proposal; thus, in accordance with N.J.A.C. 1:30-3.3(a), this proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed amendment to N.J.A.C. 8:39-45.1 will benefit those who seek to find a suitable long-term care facility for a person with Alzheimer's/dementia. The proposed amendment will directly impact only those licensed long-term care facilities that hold themselves out or advertise that they provide specialized services to individuals with Alzheimer's/dementia or seek to become authorized by the Department to do so. Currently, the Department has identified 37 long-term care facilities that are qualified to advertise that they provide such services. The proposed amendment to

N.J.A.C. 8:39-45.1 will continue to ensure that these 37 licensed facilities, as well as any other facility that may seek Department recognition to hold itself out or advertise itself as providing an Alzheimer's/dementia program, are satisfying the Department requirement of meeting at least 65 percent of the current advisory standards of Subchapter 46 in order to ensure that the resident suffering from Alzheimer's/dementia is receiving the proper level of care for someone with the resident's cognitive and functional abilities. The proposed amendment expands the range of the advisory standards that facilities can opt to comply with when establishing an Alzheimer's/dementia program from N.J.A.C. 8:39-46.1 to the entirety of Subchapter 46. As the Department has long enforced the proposed standard, which as stated in the Summary above was inadvertently deleted, facilities with Alzheimer's/dementia programs will continue to provide appropriate care to residents in these programs.

Economic Impact

There will be a direct economic impact on licensed long-term care facilities that hold themselves out as providing, or advertise that they provide specialized services to those with Alzheimer's/dementia. The economic impact will be felt by only those facilities that elect to be recognized by the Department as offering an Alzheimer's/dementia program. The proposed amendment would require these facilities to meet at least 65 percent of all current advisory standards in N.J.A.C. 8:39-46 in order to be recognized by the Department as providing an approved Alzheimer's/dementia program. The Department is unable to calculate the costs of compliance with the proposed amendment, as the costs are not predictable. Compliance costs will vary between facilities depending on which of the current advisory standards in Subchapter

46 a facility elects to meet in order to satisfy the 65 percent requirement of amended N.J.A.C. 8:39-45.1.

Federal Standards Statement

A Federal standards statement is not required because the proposed amendment is not the subject of any Federal requirements and standards. The proposed amendment is authorized by N.J.S.A. 26:2H-5.

Jobs Impact

The Department does not anticipate that the proposed amendment and new rule will result in the generation or loss of any jobs.

Agriculture Industry Impact

Pursuant to N.J.S.A. 4:1C-10.3, the Right to Farm Act, and N.J.S.A. 52:14B-4(a)2 of the Administrative Procedure Act, the Department does not expect the proposed amendment and new rule to have any impact on the agriculture industry.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Act), N.J.S.A. 52:14B-16 et seq., requires the Department to set forth the reporting, recordkeeping and other compliance requirements of the proposed amendment, including the kinds of professional services likely to be needed to comply with its requirements. The Act further requires the Department to estimate the initial and annual compliance costs of the new rules and set forth whether the proposed amendment establishes differing compliance requirements for small businesses. The proposed amendment does not impose any reporting or recordkeeping requirements. The proposed amendment imposes a compliance requirement only on long-term care facilities that hold themselves out as providing, or

advertise that they provide specialized services to those with Alzheimer's/dementia or seek such recognition. A number of these facilities are small businesses as defined under the Act. The proposed amendment does not mandate any additional costs on a long-term care facility. Only those facilities seeking to hold themselves out or advertise that they provide specialized services to those with Alzheimer's/dementia or seek to become authorized by the Department to do so would be required by the proposed amendment to N.J.A.C. 8:39-45.1 to meet 65 percent of the current advisory standards in Subchapter 46. Compliance with the proposed amendment would generate costs for a facility that elects to have the Department recognize it as providing an Alzheimer's/dementia program as discussed in the Economic Impact above. However, the costs of such a program are not predictable because the costs will vary between facilities and will also depend on which advisory standards in Subchapter 46 a facility elects to satisfy in order to reach the 65 percent threshold in amended N.J.A.C 8:39-45.1.

In order to satisfy the proposed threshold of meeting at least 65 percent of the requirements of Subchapter 46, facilities will have the option of selecting among the following requirements: establishing policies and procedures that satisfy the advisory requirements of N.J.A.C. 8:39-46.1; opting to meet the advisory staffing requirements of N.J.A.C. 8:39-46.2; satisfying the advisory facility environment requirements of N.J.A.C. 8:39-46.3; meeting the advisory activity programming requirements of N.J.A.C. 8:39-46.4; electing to satisfy the advisory nutrition standards of N.J.A.C. 8:39-46.5; and/or meeting the advisory social services standards of N.J.A.C. 8:39-46.6.

Compliance with the proposed amendment is necessary for all facilities seeking to hold themselves out as providing, or advertise an Alzheimer's/dementia program. The proposed standard in N.J.A.C. 8:39-45.1, which as discussed above was previously a requirement that was inadvertently deleted, is in the best interest of a resident for whom such a program is beneficial and for family members seeking to place an individual suffering from Alzheimer's/dementia in such a program. The Department has made no provision for lesser or differing standards based on business size and would apply the proposed amendment uniformly to all long-term care facilities seeking to establish or maintain an Alzheimer's/dementia program.

Smart Growth Impact

The proposed amendment will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions to proposal indicated in boldface thus; deletion from proposal indicated in brackets [thus]):

8:39-45.1 Scope and purpose

(a) (No change.)

(b) No facility shall advertise or hold itself out as providing an

Alzheimer's/dementia program unless it meets the data reporting requirements of N.J.A.C. 8:39-45.2 and is recognized by the Department as meeting at least 65 percent of all current advisory standards in N.J.A.C. 8:39-[46.1] **46**.